

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HARINDER JEET SINGH, :
: Plaintiff, :
: :
: -against- :
: :
EXCEL SECURITY CORP., RXR 620 :
MASTER LEASE, LLC, RXR PROPERTY :
MANAGEMENT LLC, SECURITAS :
SECURITY SERVICES CORP., JOHN :
DOES 1-5 and ABC CORPS. 1-5 (fictitious :
Names), :
: Defendants. :
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14 Civ. 10111 (PAC)

ORDER

Plaintiff Harinder Jeet Singh moves the Court to correct alleged errors in an interim pretrial conference transcript from three years ago. His motion is denied without prejudice.

The Court granted summary judgment to the defendants on all of Singh's claims by opinion and order dated March 30, 2021 (ECF No. 134), and Singh filed an appeal (which is currently pending before the Second Circuit) on April 27, 2021 (ECF No. 136). Singh filed an amended notice of appeal on May 20, 2021 and included in the electronic index on appeal the September 5, 2018 transcript (ECF No. 138) that he now seeks to make changes to. Am. Notice of Appeal, ECF No. 140; Am. Notice of Appeal at 20, No. 21-1092 (2d Cir. Docket) ECF No.

21. The defendants do not object to certain of Singh's proposed changes, but do object that others "seek[] to add language to support Plaintiff's contentions and [are] not . . . appropriate correction[s]." Defs.' Resp. to Pl.'s Appl. to Correct Tr. 1-2, ECF No. 142.

"Once a proper appeal is taken, the district court may generally take action only in aid of the appeal or to correct clerical errors as allowed by the Federal Rules of Civil (or Criminal) Procedure." *Leonhard v. United States*, 633 F.2d 599, 609-10 (2d Cir. 1980). Federal Rule of

Civil Procedure 60(a) authorizes a court to “correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a . . . part of the record.” Fed. R. Civ. P. 60(a). “But after an appeal has been docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court’s leave.” *Id.*

Accordingly, Singh’s motion is denied without prejudice to its renewal after he obtains leave from the Second Circuit. If he obtains leave, Singh should explain how the corrections he seeks are the “type of mistake or omission mechanical in nature which is apparent on the record,” rather than attempts to change statements that, in hindsight, he would have said differently (or would have liked others to say differently). *Barkley v. United Homes, LLC*, Nos. 04-cv-875 et al., 2014 WL 12828887, at *7 (E.D.N.Y. Mar. 11, 2014) (quoting *In re Merry Queen Transfer Corp.*, 266 F. Supp. 605, 607 (E.D.N.Y. 1967)).

[T]he relevant distinction is “between what is erroneous because the thing spoken, written or recorded is not what the person intended to speak, write or record, and what is erroneous because the person later discovers that the thing said, written or recorded was wrong. The former comes within Rule 60(a); the latter does not.”

Ceara v. Clark-Dirusso, No. 13-CV-3041, 2019 WL 3553354, at *3 (S.D.N.Y. Aug. 5, 2019) (quoting *Panama Processes, SA v. Cities Serv. Co.*, 789 F.2d 991, 995 (2d Cir. 1986)).

CONCLUSION

Singh’s motion is denied without prejudice. The Clerk of Court is directed to close the motion at ECF number 141.

Dated: New York, New York
July 1, 2021

SO ORDERED



HONORABLE PAUL A. CROTTY
United States District Judge